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In re Application of Smith :  
Application No.: 10/544,149 :  
PCT Application No.: PCT/US01/46882 : DECISION ON PETITION  
Int. Filing Date: 8 November 2001 : UNDER 37 CFR 1.137(b)  
Priority Date: 08 November 2000 :  
Attorney Docket No.: 3009079 US01 :  
For: IMPROVED OPHTHALMIC AND CONTACT :  
LENS SOLUTIONS WITH A PEROXIDE SOURCE :  
AND A CATIONIC POLYMERIC PRESERVATIVE :

Applicants' PETITION FOR REVIVAL UNDER 37 CFR 1.137(b), filed in the United States Patent and Trademark Office (PTO) on 1 August 2005, is **GRANTED**.

**BACKGROUND**

On 8 November 2001, applicant filed international application PCT/US01/46882. The international application claims the priority date of 8 November 2000 and designates the United States. The deadline for payment of the basic national fee into the United States National Stage was thirty months from the priority date, that is 8 May 2003. Applicant failed to pay the basic national fee and the application became abandoned at midnight 8 May 2003.

On 1 August 2005, applicant filed the instant petition for revival accompanied by, *inter alia*, a transmittal letter requesting entry into the national phase under 35 U.S.C. 371, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), a declaration of the inventor as required by 35 U.S.C. 371(c)(4), a power of attorney, a substitute specification, a preliminary amendment, application data sheet, assignment, recordation data sheet, and the petition fee of \$1500.00. The applicant is reminded that since the declaration was filed after the application was abandoned, a late surcharge fee in the amount of \$130.00 will be charged to Deposit Account No. 50-3010.

### DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) the petition fee required by law (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

The submission of the transmittal letter requesting entry into the national phase satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). The applicants' statement in the petition that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional satisfies the requirements of 37 CFR 1.137(b)(3). A terminal disclaimer is not required because the application was filed on or after 08 June 1995.


A review of the application file reveals that applicant has satisfied the requirements of 37 CFR 1.137(b), and that the application satisfies the requirements under 35 U.S.C. 371 for entry into the national stage in the United States.

### CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accordance with this decision.

  
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